

PUBLIC DEFENDER COMMISSION RESOLUTION

Whereas, the Montana Legislature created in 2005 a statewide public defender system to deliver public defender services in all courts in this state; and

Whereas, the system is supervised by the Public Defender Commission (Commission) and administered by the Office of the State Public Defender (OPD); and

Whereas, the Commission is assigned by statute the duty to establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state; and such standards must take into consideration a number of factors, including:

- (a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;
- (b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;
- (c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;
- (d) continuing education requirements for public defenders and support staff;
- (e) practice standards;
- (f) performance criteria; and
- (g) performance evaluation protocols.

And,

Whereas, the Commission is assigned by statute the duty to establish policies and procedures for handling excess caseloads; and

Whereas, the Commission has promulgated Standards relating to attorney caseloads, with the goal that caseloads must not be oppressive, and should match counsel's experience, training, and expertise; and the following principles should govern attorney caseloads:

Counsel caseloads should be governed by the following:

A. Individual Public Defender. Caseload levels are the single biggest predictor of the quality of public defense representation. Not even the most able and industrious lawyers can provide effective representation when their work loads are unmanageable. Whenever a salaried or contracting counsel determines, in the exercise of counsel's best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases, will lead to furnishing representation lacking in quality or the breach of professional obligations, the attorney is required to inform the Regional Public Defender's Office, who shall inform the Chief Public Defender. The Chief Defender will then inform the Montana Public Defender Commission.

B. Chief Public Defender. The caseload of public defense attorneys should allow each lawyer to give each client the time and effort necessary to ensure effective representation. Whenever the Chief Public Defender determines, in the exercise of his or her best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will, by reason of their excessive size and complexity, interfere with the rendering of quality representation, or the breach of professional obligations, the Chief Public Defender is required to inform the Montana Public Defender Commission, which in turn will inform the Law and Justice Interim Committee, the Legislative Finance Committee, and the Office of Budget and Program Planning and shall take all reasonable steps to alleviate the situation.

And,

Whereas, these Standards identify entities to notify during periods when the Legislature is not in session, and the Commission believes it appropriate to notify the Senate and House Judiciary Committees, the Section D Joint Appropriations Subcommittee, the Senate Finance and Claims Committee and the House Appropriations Committee during such time as the Legislature is in session; and

Whereas, the Commission has adopted OPD Policy Number 117, which states that a mission of OPD is to insure that no attorney doing public defender work, either as an employee or as a contract attorney, has a workload of such an amount that clients are not being adequately represented and/or the wellbeing of the attorney is jeopardized; which establishes that regional deputy public defenders and managing

attorneys in each public defender office are responsible for managing the workloads of the attorneys they supervise; which sets out a procedure to follow to monitor caseloads, steps to alleviate workload burdens; and which requires supervising attorneys to keep the Chief Public Defender fully informed; and which requires the Chief Public Defender to report to the Commission as workload problems arise; and

Whereas, the American Bar Association, Standing Committee on Ethics and Professional Responsibility, in Formal Opinion 06-441, dated May 13, 2006, concluded that all lawyers, including public defenders, have an ethical obligation to control their workloads so that every matter they undertake will be handled competently and diligently. If a lawyer's workload is such that the lawyer is unable to provide competent and diligent representation to existing or potential clients, the lawyer should not accept new clients; further, if a supervisor knows that a subordinate's workload renders the lawyer unable to provide competent and diligent representation and the supervisor fails to take reasonable remedial action, the supervisor is responsible for the subordinate's violation of the Rules of Professional Conduct; and

Whereas, attorney workloads throughout the public defender system are becoming excessive for a number of reasons outside the control of the Commission and OPD, including, but not limited to:

- Caseloads in criminal and civil cases increased dramatically in Fiscal Year 2012, and continue to increase in Fiscal Year 2013;
- OPD's salary structure is not competitive with the salaries and benefits offered by municipalities, counties, other state agencies, and the private sector;
- OPD has experienced substantial turnover, including the loss of over 30 attorneys, or approximately 27% of its attorney work force, and 25 support staff, or approximately 36% of its staff work force;

And,

Whereas, funds appropriated by the 2011 Montana Legislature have not been sufficient to keep up with the increase in workloads or to alleviate the turnover, and OPD lacks the ability to obtain additional resources during the interim; and

Whereas, attorneys have ethical obligations to avoid caseloads which are excessive, and supervisors have ethical obligations not to require staff attorneys to be responsible for excessive caseloads; and

Whereas, the Chief Public Defender has fully informed the Commission that in certain of the OPD regions, the acceptance of additional case assignments will interfere with the rendering of quality representation, or the breach of professional obligations;

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC DEFENDER
COMMISSION OF THE STATE OF MONTANA:

1. When conditions exist such that OPD no longer can provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense, OPD shall limit its case assignments in such a way as to match to the extent possible workload with available resources.
2. The Commission authorizes the Chief Public Defender to take any and all actions necessary to align caseloads with resources, including, but not limited to, taking all necessary and appropriate actions, in conjunction with and in consultation with judges and prosecutors, to limit acceptance of new case assignments, until OPD either receives additional resources to cover caseloads, or caseloads subside to a level that OPD can handle with current resources, or some combination of both.

Adopted February 15, 2013

Richard E. "Fritz" Gillespie, Chair
Montana Public Defender Commission